IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 583 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgment? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HEMRAJSING ROOPSANGBHAI SOLANKI

Versus

STATE OF GUJARAT

Appearance: MR DHARMESH V SHAH for the Petitioner.
Mr.V.M. Pancholi, Additional PUBLIC PROSECUTOR.
for the respondents.

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 21/02/2003

ORAL JUDGEMENT

The petitioner has challenged his externment order, dated 24.5.2002, passed in Externment Case No.44 of 2001 by the Sub Divisional Magistrate, Bhavnagar. By the impugned order, the petitioner is externed from Bhavnagar District and nearby districts, viz., Amreli,

Junagadh, Surendranagar, Rajkot and Ahmedabad District (Rural), for a period of one year.

The petitioner was served with a show cause notice under Section 59 of the Bombay Police Act, 1951, wherein the particulars are given about the high-handed activities of the petitioner. There is a reference about three pending cases also, which are under the Indian Penal Code as well as under the Arms Act.

The petitioner gave reply and the Authority, after considering the material on record, passed the impugned order of externment. The said order was carried further in appeal. The Appellate Authority also confirmed the order of the Sub Divisional Magistrate, dismissing the appeal of the petitioner, against which the petitioner has filed this Special Criminal Application.

In ground 5(e) of the petition, it is submitted by the learned Advocate for the petitioner that there is a delay in passing the impugned order, as, the show cause notice was issued on 6.9.2001 and the witnesses were examined on 18.10.2001 and 15.1.2002 and the concerned Advocate of the petitioner completed his arguments on12.2.2002. It is submitted that even though the arguments were over as back as on 12.2.2002, the impugned order in question was passed after a period of more than three-and-a-half months, i.e. on 24.5.2002. It is submitted that, therefore, there is a delay of more than three-and-a-half months in passing the impugned order from the date of conclusion of the arguments of the learned Advocate for the petitioner.

On behalf of the respondents, affidavit-in-reply is filed by one P.D. Palsana, Ex-Sub Divisional Magistrate, Bhavnagar. The said averment in the petition is dealt with in paragraph 8 of the reply, which reads as under :-

> " ... ...
>
> 8. With respect to the contents of Paras : 5(e) of the petition, I deny the same. I deny that there is a delay in passing the impugned order. The show cause notice came

to be issued on 6/9/2001 and on various occasion the adjournments were sought for from the petitioner-externee i.e. from 24/9/2001 to 19/4/2002. The petitioner externee himself is responsible for all these adjournments and after considering materials placed before me I passed the order of externment without causing any delay.

... ..."

It is required to be noted that the main contention of the petitioner is that there si a delay in passing the order after the conclusion of the arguments. Therefore, in deciding the said controversy, the fact whether the petitioner had taken adjournments earlier, etc., has no relevance. What is required to be considered is whether there is any delay or unreasonable delay in passing the final order after the arguments were concluded. In this behalf, reference is required to be made to the Division Bench judgment of this court in Chothmal Sagansingh Rajput v. State of Gujarat & ors., 1989(1) GLR 63. The Division Bench has observed as under in paragraph 6 :-

" ... ...

6. It is next contended by Mr.Saiyed that the authorities concerned have mechanically applied their mind and externed the petitioner after the delay of nearly five months subsequent to the closing of the arguments. In externing a person, which is in the public interest, the authorities are expected to act promptly and if they delay the mater, the same will spell out that there is no urgent need nor necessity to extern a person from a particular locality or the District. Definitely such externment orders curtail the freedom of movement of the person concerned. Any laches on the part of the authority concerned cannot be countenanced and it will definitely enure to the benefit of the party concerned and on that score he will be entitled to the benefit of quashing such an order of externment. As far as the present case is concerned, the Superintendent of Police, who heard the

explanation and arguments, closed the arguments as early as in September, 1987. Only on 19.2.1988, the Superintendent of Police has sent the report to the externing authority, who is the Deputy Commissioner of police, Ahmedabad. In his affidavit, the Superintendent of Police Mr.G.I. Doabiya has stated that the delay has occurred due to the fat that he was required to visit various Police Stations on various dates for checking various aspects of the Police administration, including the papers regarding the Police Investigations. He has also stated that on several occasions on various dates, he remained busy with the Police Bandobast. Regarding the details of such work he has performed, the Superintendent of Police has attached Annexure 'A' to his affidavit-in-reply. Through my learned Brother R.J. Shah, I was able to get Annexure 'A' translated into English. It is clear from Annexure 'A' that the officer concerned, without giving any particulars as rears the time, has generally stated that he was busy in various other duties on a particular day. Such type of vague and prototype assertion regarding the work performed on each day cannot, in our opinion, substantiate the genuineness of the delay caused in this case. When especially a person who is dangerous to the society, is sought to be externed, the authorities concerned should expeditiously take action, instead of giving reasons, which in our opinion are not acceptable is condone such inordinate delay. Reading Annexure 'A' along with the affidavit-in-reply filed by the Superintendent of Police, we are not convinced in respect of the reasons given by the Superintendent of Police in sending the report with a delay of nearly five months. Mr.B.D. Desai cited the decision in the case of Banas Domnic Miranda v. A.K. Ankola & Others, 1982 Cri.L.J. 2059 to show that mere delay in passing the externment order cannot be fatal to quash such an order. In this case, the Bench of the Bombay High Court has clearly stated that the delay in passing an order of

> externment is not ipso facto fatal to the externment order, for in certain cases delay may be unavoidable and reasonable. Thus, it is clear that if the delay is unavoidable and reasonable, the explanations can be accepted. As far as the present case is concerned, looking to the affidavit of Superintendent of Police and also Annexure 'A' attached to his affidavit, it does not spell out any unavoidable and reasonable explanation for such an inordinate delay in sending the report to the externing authority. In the case of Abbas Husain Fateh Mahammad v. The Deputy Police Commissioner, Surat & Anr., 1988 Cri. L.J. 434, a Bench of our High Court, of which I was one of the members, had an occasion to consider the delay of seven months and 17 days in passing the externment order after the arguments were heard. In the present case, there is a delay of nearly five months in sending the report to the externing authority and there is seven months delay in passing the externment order subsequent to the submission of the explanation and argument by the petitioner herein. In the case cited above, this Court held that the delay will definitely vitiate the externment order passed by authorities concerned. Such preventive actions should be taken immediately and any inordinate delay will definitely vitiate such an action taken as a preventive measure. Following the very same reasoning and principles laid down by this Court, in the facts and circumstances of the present case we find that there is definitely inordinate delay in sending the report and, therefore, the order of externment cannot be sustained.
>
> ... ..."

In the instant case, the Authority has not explained the delay of more than three months in passing the final order. In fact, no explanation worth the name is given about the delay in passing the order after conclusion of the arguments, and, as stated earlier, the delay is tried to be explained on the ground that the petitioner has taken various dates, and the explanation is given regarding earlier part before the conclusion of the

arguments. In that view of the matter, the authority has not at all explained the delay in passing the order of about three-and-a-half months from the date when learned Advocate for the petitioner completed his arguments.

Considering the aforesaid aspect and considering the Division Bench judgment cited above, the petition is required to be allowed and the impugned order is required to be set aside solely on the aforesaid ground of delay in passing the order after the conclusion of the arguments. It is clarified that this Court has considered the question of delay only for the period between the conclusion of the arguments and passing of the final order and since the Division Bench judgment is on similar point of delay in passing the final order after the conclusion of the arguments, the impugned order in the instant case is also required to be set aside and it is accordingly set aside.

Accordingly, the order dated 24.5.2002 passed by the Sub-Divisional Magistrate, Bhavnagar, (Annexure 'A') and the order dated 6.8.2002, passed by the appellate Authority (Annexure 'B'), dismissing the appeal and confirming the order passed by the Sub-Divisional Magistrate are quashed and set aside. Rule is accordingly made absolute.

Direct service is permitted.

21st February, 2003 (P.B. Majmudar, J.)

***

(apj)